

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

DAVID ANTHONY RUNYON

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

Case No. 4:15-cv-108

Initial Criminal No. 4:08-cr-16-3

CAPITAL § 2255 PROCEEDINGS
HON. REBECCA BEACH SMITH

**PETITIONER'S MOTION TO EXPAND PAGE LIMITS FOR PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

COMES NOW, Petitioner David Anthony Runyon, by counsel, and submits the following motion to expand the page limit for the Proposed Findings of Fact and Conclusions of Law due on January 15, 2024, to 60 pages. In support of his motion, Mr. Runyon states the following:

1. Petitioner is a death-sentenced federal prisoner pursuing relief under 28 U.S.C. § 2255.
2. As this Court has previously recognized, the relevant discovery materials in this matter are voluminous, and the claim Petitioner is litigating on remand—that his trial counsel failed to investigate and present mitigation evidence of brain damage, mental illness, and his psychosocial history—is complex. *See* ECF No. 810 at 1–2.
3. Following the Fourth Circuit’s remand, this Court held a 15-day evidentiary hearing, with testimony from thirteen lay witnesses and six expert witnesses. The transcript from that hearing spans more than 2,500 pages, and more than 175 exhibits were admitted into evidence. Much of the transcript involves expert testimony and evidence relating to neuropsychiatry,

neurology, neuropsychology, forensic psychology, and neuroradiology.

4. At the conclusion of the hearing, the Court ordered the parties to simultaneously file proposed findings of fact and conclusions of law on January 15, 2024, noting that the parties should “not ask for a response [brief][.]” 2023 Hr’g Tr. 2646:6–2647:12.

5. On December 18, 2023, the Court issued a written order “remind[ing] counsel . . . that each party must file a brief containing findings of fact and conclusions of law on or before 5:00 PM on January 15, 2024,” and ordering that “[t]hese simultaneous submissions each shall not exceed thirty pages, double spaced.” ECF No. 909 (citing E.D. Va. Loc. Civ. R. 7(f)(3)).

6. In light of the voluminous evidentiary record, the stakes of these proceedings, and the fact that the parties will have only one opportunity to file a brief, Petitioner respectfully submits that 30 pages is insufficient to summarize and brief the evidence adduced in these proceedings and the relevant legal issues in a manner that would be of assistance to the Court. The format of the briefing also makes it more difficult to stay within the allotted pages, as the numbered paragraph structure of proposed findings and conclusions necessarily lengthens the brief. Given all of these considerations, Petitioner respectfully requests that the Court expand the page limit for the simultaneous briefing to 60 pages. Moreover, although the Court’s order cited Local Rule 7(f)(3) to set the 30-page limit, “[p]roposed findings of fact and conclusions of law are not briefs or motions’ and therefore the page limitations in Local Civil Rule 7(F)(3), governing briefs and motions, does not apply to such submissions.” *CertusView Techs., LLC v. S & N Locating Servs., LLC*, No. 2:13CV346, 2016 WL 3647592, at *1 n.1 (E.D. Va. June 29, 2016) (Davis, C.J.) (citation omitted).

7. Petitioner further requests some modest clarification concerning the structure of the briefs. Petitioner understands that the Court has ordered the parties to file proposed findings of fact

and conclusions of law. However, in light of the Court's reference in the December 18 order to each party filing "a brief," ECF No. 909, Petitioner requests clarification as to whether the parties may include, within the allotted page limit, limited, narrative-style briefing in addition to their proposed findings and conclusions. Petitioner submits that a short narrative discussion would be helpful to sharpen the key arguments and issues for resolution.

8. Undersigned counsel contacted counsel for the United States on December 20 to seek their position on this request. Counsel for the government responded on December 22 to state that they objected "to any extension of the 30 page limit for the opening briefs." Undersigned counsel responded the same day requesting clarification of the government's position given their reference to "opening briefs," and in light of the Court's prior comments that there would be no response briefs. Counsel for the government had not responded as of the time of this filing (which is understandable given the intervening holiday). Petitioner endeavored to file this motion as soon as possible following the Court's December 18 briefing order, taking into account pre-planned holiday leave for Mr. Runyon's counsel and the desire to confer with the government before filing.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant this Motion and expand the page limit for Proposed Findings of Fact and Conclusions of Law to 60 pages.

Dated: December 28, 2023

Respectfully Submitted,

/s/ Kathryn M. Ali

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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2023, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will then send a notification of electronic filing (NEF) to the following:

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